

Intermediary Services for Relatives of Adopted People who were adopted before 30 December 2005

Introduction

On 9 December 2013 the Government tabled an amendment to the Children and Families Bill 2013 to add a new clause which amended section 98 of the Adoption and Children Act 2002 to enable regulations to be made for the provision of facilitating contact between persons with a prescribed relationship (including descendants) and adopted persons. The regulations came into force on 31 October 2014.

The following information has been prepared for prescribed relatives of adopted people to explain their rights to apply for access to an intermediary service under these new provisions. An intermediary agency is able to obtain information from a range of sources including the adoption agency, the Registrar General (RG) and the courts (in addition to publicly available information) to enable it to trace relatives. This also provides answers to some commonly asked questions about the recent change in the law and explains what prescribed relatives can do to apply for the service and information they need. The Q&A is in two parts. The first part explains the new provisions and the second part provides information for relatives who already have some identifying information about their relative who was adopted.

If you have any comments or further questions about the Q&A then please email these to julia.feast@corambaaf.org.uk

Part 1

Q1. What do the new rules mean?

A. The Government has amended The Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 to extend the provision of intermediary services to facilitate contact between ‘persons with a prescribed relationship’ and the birth relatives of a person adopted before 30 December 2005. This will allow a wide range of relatives to apply to an intermediary agency to help facilitate contact with biological and non-biological relatives. Previously only the adopted person and the birth family could use an intermediary service. Under the new rules, a wide range of relatives (including descendants, spouses or adoptive relatives) can now apply to an intermediary agency for help tracing relatives of the adopted person.

Q2. Who is included in the definition of a ‘person with a prescribed relationship’?

A. Under the Regulations, a relative is defined as a person who, if the person had not been adopted, would have been related to them by blood or by marriage, but who is no longer *legally* related to the adopted person because the adoption ended the *legal* relationship between them.

When the Regulations were extended to allow descendants and other specified people to apply for an intermediary service, these people could not be described as ‘relatives’ because ‘relatives’ already has a specific meaning for the purposes of the Regulations. Descendants and others are described as ‘persons with a prescribed relationship’, which means people who are related to the adopted person by blood, marriage or civil partnership, and who also still have a legal relationship with the adopted person because their legal relationship has not been affected by the adoption, or they are related to the adopted person by virtue of his adoption.

Q3. What is an intermediary service/agency?

A. Intermediary services are delivered by specialised adoption agencies (intermediary agency) that help trace and facilitate contact and (in some circumstances) disclosure of information between adopted adults, their birth relatives and now 'persons with a prescribed relationship', as well as provide counselling, support and advice.

Intermediary services may be provided by local authorities, adoption agencies and adoption support agencies. If the service you require is not available from the agency you approach, they should be able to advise you how to take your enquiries forward and sign post you to an agency that can help.

Q4. Who can apply for an intermediary service?

A. You can apply to an intermediary agency if you are 18 years and over, and if you were adopted before 30 December 2005, if a birth relative of yours was adopted before 30 December 2005 or if you have a prescribed relationship with a person adopted before 30 December 2005, which includes descendants of adopted adults. This change will allow you the right to apply to an intermediary service for the purpose of facilitating contact between you and the adopted person's birth relatives.

These new provisions do not apply to those relatives whose relative was adopted after this date.

Q5. Why can't prescribed relatives of people who were adopted on or after 30th December 2005 apply for an intermediary service?

A. In relation to adoptions that took place on or after the 30th December 2005, any person may apply for information from the agency that arranged the adoption. The adoption agency has discretion whether to release information and has to take various factors into account when deciding whether it will be appropriate to do so. The Adoption and Children Act 2002 and The Disclosure of Adoption Information (Post-Commencement Adoptions) Regulations 2005 established a new system of retaining and disclosing information relating to adoption for adoptions that took place on or after the 30 December 2005.

Q6. What are the conditions where a person with a prescribed relationship applies for contact with a birth relative whilst the adopted person is still alive?

A. If the adopted person is alive, the intermediary service would be required to take all reasonable steps to seek the views of the adopted person. If the adopted person could not be found, or if they could be found but were incapable of giving informed consent, it would be for the intermediary service to decide whether it was appropriate to proceed with the application. If the adopted person was found but did not consent to the application proceeding, the intermediary agency should not continue with the application. However, the intermediary agency would have discretion to proceed with an application from a spouse, child, grandchild or great grandchild in order to share information about the medical history of relatives, if this can be done without disclosing identifying information.

Q7. Are there any conditions when a birth relative applies for contact with a person with a prescribed relationship when the adopted person is alive?

A. If the adopted person has registered a veto against contact, the intermediary agency must reject the application without making contact with the adopted person, unless the adopted person is deceased or if the veto is qualified and the qualifications apply.

If the adopted person has not registered a veto, the intermediary agency must seek the views of the adopted person before proceeding further with the application. If the adopted person does not

consent or cannot be found, the intermediary agency cannot proceed with the application (the only exception to this is where the adopted person does not have the capacity to give informed consent).

Q8. What happens when a prescribed relative applies for contact with a person who has died?

A. The Regulations allow an intermediary agency the discretion to disclose information, including identifying information, if the subject has died or is unable to give consent. The agency must decide on what information it is appropriate to disclose.

Q9. My main aim is to find my late father's birth name and his adoption records so will the new law enable me to do this?

A. The new law enables you to make an application to an intermediary agency for a service to facilitate contact with a birth relative, for example your father's birth mother. If your father has died the intermediary service will need to establish whether the birth mother is still alive, and if so whether she will consent to contact or to information about herself being released. If the relative has died, the intermediary agency has the discretion to release identifying information about that relative. This could include information about the circumstances surrounding your father's birth and adoption and may give you enough information to obtain a copy of your father's original birth certificate, which will be available from public records.

Q10. Am I allowed to have a copy of the original birth certificate that contains my father's birth name and other details?

A. There is a statutory right for anybody to have a copy of any birth certificate that they can identify. In some cases where a prescribed relative applies for an intermediary service for contact with a birth relative of the adopted person, they may be given information (see Q above) to identify their father's original birth registration and apply for a copy of his birth certificate.

Q11. What is the first step I need to take?

A. If you do not know your relative's birth name or the agency that organised the adoption then you should approach either your local authority or an adoption support agency to request/apply for an intermediary service.

Q12. How can I find an intermediary agency?

A. As explained intermediary services can be provided by local authorities, voluntary adoption agencies and adoption support agencies. However, due to lack of resources not all local authorities and voluntary adoption agencies can provide intermediary services. There is a list of adoption agencies on the CoramBAAF Adoption Search Reunion Website- <http://www.adoptionsearchreunion.org.uk/help/database/>.

Q13. How much does an intermediary service cost?

A. Costs for intermediary services can vary, depending on the type of search that is undertaken and the service that is provided. It is important to contact the agency to discuss their charges and the service you wish to employ.

Q14. Do I have to produce evidence of who I am and my relationship to the adopted person?

A. Yes. The agency that is working with you will need to verify your identity and relationship to the adopted person and that you are a prescribed relative. They will ask to see documentation such as a copy of the birth and marriage/civil partnership certificates.

Q15. Will the adoption records still exist?

A. In most cases where an agency has arranged the adoption, records will exist. Since 1975, adoption agencies have by law been required to keep their records for at least 75 years. But some records may have been wholly or partially destroyed or just be “missing”. Records, whether held electronically or on paper, are also vulnerable to various forms of deterioration. In situations where the adoption was arranged privately, it is less likely that background information exists. However, in some instances, documents that were necessary for the court to make an adoption order may have survived. The intermediary agency you are using will be able to advise you about this. Where an agency has closed, they are obliged to hand their records to the local authority.

Q16. How can I pass on information about a medical condition I have which is hereditary?

A. The NHS provides a service where medical information about an existing hereditary medical condition can be exchanged between the GP of an adopted person and the GP of their birth family.

Provided the adopted person/birth relative can be identified from the information available and is currently registered with a GP in England, Wales or the Isle of Man, medical information about existing hereditary conditions may be passed on.

The service is subject to the consent of both GPs involved and only information relating to an existing medical condition which is hereditary will be passed on. The service does not include the facilitation of any contact between the applicant and the adopted person and birth relative. For more information please see link below.

<http://www.hscic.gov.uk/article/1801/Hereditary-Medical-Conditions>

Q17. I would like to trace birth family members so how can I go about this?

A. The new rules allow descendants and other biological and non-biological relatives of people adopted before 30 December 2005, to apply to an intermediary agency to help facilitate contact with birth relatives of the adopted person. It is important to discuss your wish to search for birth family members with the adoption worker you are in touch with at the adoption support agency/ LA or voluntary agency. This will give you an opportunity to consider the implications this has for you and also for the family members who are contacted. It may be that these relatives are unaware that a person from their family was adopted so it is important that any approach is made in a sensitive way.

Q18. What is the likely outcome when contact is made?

A. There can be a range of outcomes. Some birth relatives may be very pleased and welcoming to hear from you whilst others have no interest and refuse all contact. It is therefore important to consider some of the possible scenarios that you may encounter so that you are prepared for the outcome you receive.

Part 2

Information for prescribed relatives where they already have some identifying information

Q1. I already know my relative’s original name and the name of the agency that arranged the adoption so what do I have to do?

A. With such information you are in a good position to find out more information about your family background. In this situation you can do your own family research by using public records or alternatively you can contact the adoption agency that arranged the adoption to find out if they hold

any information and if so whether they are able to share this with you. The [Locating Adoption Records database](#) on this website will help you to find the contact details for the agency they need to speak to. You may also apply to an intermediary service if you would like help in approaching relatives or arranging a meeting.

Q2. I know my father's original name before he was adopted but how can I find out more information?

A. If you know the original birth name of your parent, prior to his/her adoption then you should be able to obtain a copy of their original birth certificate in the normal way. With the information on the birth certificate you should be able to begin a search for further information, such as whether or not the address on the birth certificate is a mother and baby home. You can check this address by using the [Locating Adoption Records database](#) on this website as this includes details of mother and baby homes. If it was a mother and baby home or shelter for unmarried mothers then you will also be able to check which adoption agencies used the home by going to the ASR website and looking at the database. This will hopefully lead you to the agency that currently holds the adoption records, who you can then contact to see if they have any further information that they are able to give you about your parent that was adopted.

Q3. I know the name of the adoption agency that was involved in my parent's adoption but no other information so what can I do?

A. In this situation you should contact the adoption agency and ask if they are able to help you obtain more information. You will need to explain that you do not have details of the original name. It is likely that they would want confirmation of your relationship with the adopted person so you would need to have a copy of the adoption certificate and documentation that shows your biological relationship.

If records still exist the adoption agency may be able to provide background information and also an intermediary service if you are hoping to trace and contact birth relatives of a deceased adopted person. The Appropriate Adoption Agency may also wish to use their discretion under regulation 15 of the Adoption Agency Regulations 1983 to disclose identifying information such as the adopted person's birth name. If you are able to obtain the adopted person's birth name and other relevant information, then this will enable you to search through public records to locate members of their birth family. If the adoption agency has closed down then the adoption records would have been transferred to either another voluntary adoption agency or to the local authority where the adoption agency was based. The [Locating Adoption Records database](#) on the ASR website can help you to locate the information you need.

Q4. I have a copy of my mother's small birth certificate but it only shows her adoptive names so how can I get a copy of her original birth certificate?

A. You will need to apply for an intermediary service to facilitate contact with a relative, for example your mother's birth mother. The intermediary service will need to establish whether the birth mother is still alive, and if so whether she will consent to contact or to information about herself being released. If the relative has died, the intermediary agency has the discretion to release identifying information about that relative. This could include information about the circumstances surrounding your mother's birth and adoption and may give you enough information to obtain a copy of your mother's original birth certificate, which will be available from public records.

Q5. I have a copy of the full adoption certificate for my late father with the name of the court so can I apply directly to the court for access to these records?

A. Although the adoption certificate does not give any information about your father's original birth name and details of her birth parents, it will show the date of the adoption, the Court where the

adoption order was granted and the names and address of the adoptive parents. With this information you can:

- Write to the Court asking the Magistrate to use his discretion to release the information from the original adoption file or;
- Contact the adoption team in the local authority, or voluntary adoption agency (if known) or an adoption support agency to ask if they can provide an intermediary service and approach the Court on your behalf.

Courts seem to vary in how they respond to such requests; some courts are willing to provide information, and others may request that the descendant appears before the judge. There is no guarantee that you will be successful, but it's worth trying as some people have succeeded this way. The following link gives you information about an application that was successful.

<http://www.bailii.org/ew/cases/EWFC/H CJ/2014/33.html>

Q6. The Court where my father's adoption took place has closed down, where do I look now?

A. This can be difficult. Cases and files will usually have been transferred to the local family court centre, which can be found at: <https://courtribunalfinder.service.gov.uk/> or older files may have been stored in the appropriate local authority's history collection. The National Archives <http://www.nationalarchives.gov.uk/> may contain some records or have information about where records are held.